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10/768,945	01/30/2004	Ralph Louis Chappell	Serie 6375	7169

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THE MATTHEWS FIRM
2000 BERING DRIVE
SUITE 700
HOUSTON, TX 77057

EXAMINER

GILBERT, WILLIAM V

ART UNIT	PAPER NUMBER
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3635

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/25/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/768,945	Applicant(s) CHAPPELL ET AL.	
	Examiner William V. Gilbert	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>20 Dec 2004</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

This is a First Action on the Merits. Claims 1-65 are pending and examined as set forth below.

Claim Objections

1. Claim 20 is objected to because of the following informalities: claiming a combination of a slab with industrial equipment where the "industrial equipment" is not earlier claimed. Independent Claim 15 does not claim the "industrial equipment", but only that the slab is to be used for a foundation for industrial equipment. Appropriate correction is required.

Claim 56 objected to because of the following informalities: Claiming a method without actually claiming any method steps. Appropriate correction is required.

Double Patenting

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

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A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-49 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-49 of copending Application No. 10/768945. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 8, 19, 23, 27, 30, 39, 43 and 58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 8, 19, 23, 27, 30, 39 and 43 the phrase "and/or" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05.

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Claim 58 recites the limitation "the support" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 23 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Haseotes (U.S. Patent No. 5,881,527).

Claim 23: Haseotes discloses a method of making a slab by providing a form (Column 4, lines 16-20), partially filling the form with concrete, placing means for attachment (Figure 7, element 20), into the concrete, filling the form with concrete, allowing it to cure, the thickness is 6 inches (Column 8, line 22), and removing the form.

Claim 26: the slab has reinforcement (Column 9, lines 31, 32).

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Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 9-11, 15-20, 22, 25, 27-32, 39-41 and 44-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haseotes.

Claim 1: Haseotes discloses a method of using a slab by placing the slab on the ground (Figure 10A) and placing at least one piece of industrial equipment on the surface of the slab (abstract). Haseotes does provide dimensions for the slab and says it can be made in any configuration (Column 8, lines 20-29), but it does not provide the specific dimensions claimed or the step of leveling the slab. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the slab of these dimensions as a matter of design choice because Applicant failed to state a criticality for the necessity of these dimensions and the prior

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art is capable of being made in this manner. Further, it would be obvious to level the slab because it is well known in the art to level a slab before its intended use.

Claim 15: Haseotes discloses a pre-molded slab (Figure 7) with reinforcement (Abstract). Haseotes does provide dimensions for the slab and says it can be made in any configuration (Column 8, lines 20-29), but it does not provide the specific dimensions claimed or the step of leveling the slab. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the slab of these dimensions as a matter of design choice because Applicant failed to state a criticality for the necessity of these dimensions and the prior art is capable of being made in this manner. Further, it would be obvious to level the slab because it is well known in the art to level a slab before its intended use.

Claim 39: Haseotes discloses a method for providing a foundation by obtaining a pre-cast slab (Figure 1) with reinforcement (Abstract) of rods (Column 9, lines 30-35), moving the slab to its location, placing the slab on a substrate, and placing storage facilities on the slab (Abstract). Haseotes does provide dimensions for the slab and says it can be made in any configuration (Column 8, lines 20-29), but it does not provide the specific dimensions claimed or the step of leveling

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the slab. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the slab of these dimensions as a matter of design choice because Applicant failed to state a criticality for the necessity of these dimensions and the prior art is capable of being made in this manner. Further, it would be obvious to level the slab because it is well known in the art to level a slab before its intended use.

Claim 2: the concrete has reinforcement (Abstract).

Claims 3 and 40: the slab has means for attachment (Figure 1, element 20) accessible from the top surface.

Claims 4, 16 and 41: the means is anchor bolts (Figure 5, element 25).

Claims 6 and 20: the equipment is a storage facility holding tank (Abstract).

Claim 9: the slabs are multiple pieces (Figure 7) and adjacent to each other.

Claim 10: Haseotes does provide dimensions for the slab and says it can be made in any configuration (Column 8, lines 20-29), but it does not provide the specific dimensions claimed. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the slab of these dimensions as a matter of design choice because Applicant

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failed to state a criticality for the necessity of these dimensions and the prior art is capable of being made in this manner. The phrase "available...delivery" line 3, is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claims 11 and 44: the slab is capable of being used as a splash pad.

Claim 17: the apertures (20) can be used to install fence posts.

Claim 18: the slab has at least one side sized to interconnect with a surface of another slab (Figure 7).

Claims 19 and 27: the slab has reinforcement, but Haseotes does not disclose that the rebar is placed in such a fashion. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to place the reinforcement parallel to one another because it is well known to have rebar placed in this manner for reinforcement.

Claim 22: the means for attachment is removably attached to the support frame (Figure 5, element 25), but Haseotes does not

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specifically disclose the reinforcement is in a support frame.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have the rebar made into a support frame because it is well known in the art to have reinforcement made in such a manner.

Claim 25: the slab has more than one piece (Figure 7) and the pieces are capable of interconnecting.

Claim 28: the rebar would inherently form a three-dimensional structure.

Claim 29: the rods are prestressed (Column 17, line 5).

Claim 30: it is inherent that the slab would be cured prior to use if it were portable. One would not transport a wet slab.

Claim 31: the concrete would be of different densities in different locations of the slab (the density of the slab would be different in the center of the slab versus exact areas where the reinforcement is).

Claim 32: Haseotes discloses the claimed invention including a furrow (Figure 1, element 15), but it does not disclose a plurality of furrows. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have numerous furrows, since it has been held that mere duplication of the essential working parts of a

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device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Claims 45, 46, 47, 48 and 49: Haseotes does provide dimensions for the slab and says it can be made in any configuration (Column 8, lines 20-29), but it does not provide the specific dimensions claimed. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the slab of these dimensions as a matter of design choice because Applicant failed to state a criticality for the necessity of these dimensions and the prior art is capable of being made in this manner.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haseotes in view of Gaudelli (U.S. Patent No. 4,660,344).

Claim 5: Haseotes discloses the claimed invention except attaching a cable to the attachment means. Gaudelli discloses using a cable (Figure 10, proximate F) with the attachment means to move the slab. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use a cable to move the slab in Gaudelli with the slab in Haseotes because it is well known in the art to use this type of equipment to transport slabs.

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Claims 7 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haseotes in view of Hartman (U.S. Patent No. 3,407,551).

Claims 7 and 42: Haseotes discloses the claimed invention including a storage facility, but it does not disclose anchoring a leg of the facility to the slab. Hartman discloses a storage tank (Figure 1, element 10) with a leg anchored to a slab (14). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to anchor a leg of a storage facility to whatever surface it is on to stabilize it.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haseotes in view of Hartman further in view of Paquette (U.S. Patent No. 5,720,135). Haseotes in view of Hartman disclose the claimed invention except installing fencing around the perimeter of the slab. Paquette discloses a concrete structure (Figure 1) with a fence around the perimeter. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to put a fence around the structure in Haseotes to prevent unwanted intrusion.

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Claims 12-14, 21, 33-36 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haseotes in view of Myers (U.S. Patent No. 5,386,699).

Claim 33: Haseotes discloses a portable precast slab (Figure 7) and placing the slab on the ground. Haseotes does provide dimensions for the slab and says it can be made in any configuration (Column 8, lines 20-29), but it does not provide the specific dimensions claimed. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the slab of these dimensions as a matter of design choice because Applicant failed to state a criticality for the necessity of these dimensions and the prior art is capable of being made in this manner. Further, Haseotes does not disclose offloading liquid cryogenics over the slab and using the slab as a splash pad for the cryogenics. Myers discloses a cryogenic tank (Figure 3, element 78) over a pad (117). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the slab in Haseotes with the tank in Myers and use the concrete as a splash pad because the purpose of the slab in Haseotes is for storage facilities and is capable of being used in conjunction with the tank in Myers.

Claim 12: the industrial equipment has a pump that is required to compress the cryogen.

Claims 13, 14 and 21: Haseotes in view of Myers does provide dimensions for the slab and says it can be made in any configuration (Column 8, lines 20-29), but it does not provide the specific dimensions claimed nor the step of leveling the slab. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the slab of these dimensions as a matter of design choice because Applicant failed to state a criticality for the necessity of these dimensions and the prior art is capable of being made in this manner.

Claim 34: the slab in Haseotes has reinforcing in it (Abstract).

Claim 35: Haseotes discloses attaching means (20) accessible from the top surface of the slab.

Claim 36: the attachment means is a bolt (Figure 5, element 25).

Claim 38: the slab is multiple pieces (Figure 7) adjacent to each other to form the slab.

Claims 24 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haseotes in view of Paquette.

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Claims 24 and 43: Haseotes discloses casting a plurality of apertures (20) into the slab visible from the top surface, and one would clearly place the slab at an industrial site, but it does not disclose installing fence posts into the apertures. Paquette discloses a structure (Figure 1) with a fence (10). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the apertures in Haseotes to install fence posts because the apertures in Haseotes are capable of maintaining fence posts, and one would put a fence around such a structure to prevent unwanted intrusion.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haseotes in view of Myers further in view of Gaudelli.

Claim 37: Haseotes in view of Myers discloses the claimed invention except for the cable means (one would clearly move the slab once the cable was attached. Gaudelli discloses a cable (Figure 10, proximate F) for moving the slab. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use a cable to move the slab in Gaudelli with the slab in Haseotes because it is well known in the art to use this type of equipment to transport slabs.

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Claims 50-58 and 60-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myers in view of Haseotes (U.S. Patent No. 5,386,699).

Claim 50: Myers discloses coupling the industrial equipment (Figure 3, element 78) to a facility remote to the slab (116). Haseotes discloses a portable precast slab that would clearly be lifted and moved from a delivery vehicle and placed on the site and placing industrial equipment on the slab (Abstract), but it does not disclose fluidly coupling the equipment to a facility remotely from the slab. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the portable slab in Haseotes in the manner in Myers because the slab in Haseotes is intended for industrial use (Abstract) and is capable of functioning in an equivalent manner with the slab in Myers (117).

Claim 51: Myers in view of Haseotes discloses a cryogenic tank (78) and a vaporizer (178) coupled.

Claim 52: Myers in view of Haseotes has the equipment secured to the top surface of the slab.

Claim 53: Myers in view of Haseotes discloses cryogenic equipment (78).

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Claims 54, 55, 56, 57 and 60: Myers in view of Haseotes disclose the claimed invention except placing the slab on a vehicle and transporting the slab to a site (Claim 54), a customer order and preexisting slab prior to the order (Claim 55), unimproved earth (Claim 56), a single supplier for the equipment and processing material (Claim 57), and using a crane to move the slab (Claim 60). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have these limitations because, per Claims 54 and 55 is well known in the art to use a delivery vehicle to move a portable slab in response to a customer order. It is also well known in the art to have the slab preexist the customer order (Claim 55) and have a single supplier for the slab, equipment and materials (Claim 57) because these are common in the art.

Claim 58: the support surface (top of slab) is part of a permanent structure housing the facility (the tank).

Claim 61: the slab has lift members (Haseotes, element 20). It would be inherent to couple a lifting apparatus to the lift members because that is their intended use.

Claim 62: the slab is secured with retaining members (Figure 14a element 25).

Claim 63: Myers in view of Haseotes disclose a slab for a storage facility, they do not specifically disclose the

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invention as claimed. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the method as claimed because one of ordinary skill in the art would transport the slab in such a manner.

Claim 64: Myers in view of Haseotes disclose a slab for a storage facility, they do not specifically disclose the invention as claimed except for coupling the equipment to a facility remote to the slab (Myers 116). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the method as claimed because one of ordinary skill in the art would transport the slab in such a manner and the claim provides no structural limitation.

Claim 65: while Myers in view of Haseotes disclose a slab for a storage facility, they do not specifically disclose the invention as claimed. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the method as claimed because one of ordinary skill in the art would remove cryogenic material from a slab before transporting it to lighten the total load.

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Conclusion

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Neighbours (U.S. Patent No. 5,644,893), Wahl (U.S. Patent No. 6,923,145).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571.272.6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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22 Jan 07
Paul K. Hall
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